

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATP 134, Wis. Adm. Code (Existing)

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Relating to: Residential Rental Practices

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### 1. Description of the objective of the rule:

This proposed rule will modify current rules related to trade practices in residential rental transactions, ch. ATP 134. Because of recent changes to ch. 704, Stats. (Landlord and Tenant) by 2011 Act 143 and 2013 Act 76, there are now some provisions of ch. ATP 134 that are inconsistent with ch. 704, Stats.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. Ch. ATP 134 was first adopted (as Ag. 134) in 1980. DATCP made some revisions to the rule in 1998.

Chapter ATP 134 prescribes requirements for earnest money, security deposits, and lease provisions. It also prohibits various practices and rental agreement provisions, limits the landlord's ability to enter the premises without notice, and requires landlords to make certain disclosures (for example, uncorrected building code violations of which the landlord is aware).

Chapter ATP 134 regulates residential rental transactions and does not regulate commercial or agricultural rental practices. Chapter 704, Stats., governs relationships between landlords and tenants and includes all rental arrangements – not just residential. DATCP does not administer ch. 704, Stats. With the passage of 2011 Act 143 and 2013 Act 76, there are some sections of ATP 134 that conflict with the recent revisions to the statute.

DATCP initiated rulemaking on ATP 134 after the passage of 2011 Act 143 (*see* Rules Clearinghouse #13-02). However, DATCP withdrew that rule proposal when 2013 Act 76 was enacted. Act 76 made a few additional changes to ch. 704, Stats. With this scope statement,

DATCP intends to restart the rulemaking process to make sure that the final rule is consistent with both acts.

Proposed policies. DATCP proposes only limited changes to the rule as necessary to resolve inconsistencies with recently revised ch. 704, Stats.

Policy Alternatives. Do nothing. If the department does not revise the rule, it could be confusing to both rental property owners and tenants because the existing rule is inconsistent with new statutory provisions.

**3. Statutory authority for the rule (including the statutory citation and language):**

Sections 93.07 (1) and 100.20(2)(a), and 704.95, Stats.

**Section 93.07 Department duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

**Section 100.20 (2)(a).**

The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

**Section 704.95 Practices regulated by the department of agriculture, trade and consumer protection (as amended by Act 76).**

Practices in violation of s. 704.28 or 704.44 may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.

**4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

This existing rule affects residential rental property owners, managers and tenants.

**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

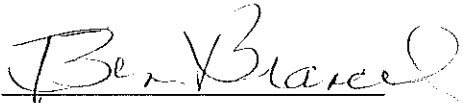
Federal law does not generally regulate landlord and tenant relationships. The Federal Fair Housing Act of 1968, however, does prohibit a landlord from discriminating because of a renter's race, sex, national origin, or religion.

Many states, including all of Wisconsin's neighbors, have statutes or regulations that regulate landlord and tenant relationships.

**7. Anticipated economic impact**

DATCP expects the proposed rule to have no economic impact statewide and locally. DATCP proposes to make relatively minor changes to existing rule to bring the existing rule into conformity with recent statutory changes.

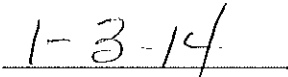
**Contact Person:** Kevin LeRoy, Program and Planning Analyst, DATCP; Phone (608) 224-4928



Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection



Date